

# Exhibit 10

Declaration of Christopher Brancart in Support of  
Plaintiffs' Motion for Partial Summary Judgment or in  
the Alternative Summary Adjudication of Issues

*Fair Housing v. Roommate.com*  
Case No. 03-CV-09386 PA (RZx)

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

FAIR HOUSING COUNCIL of	)	
SAN FERNANDO VALLEY,	)	
et al., etc.,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	Case No. 03-CV-09386
	)	PA (RZ)
	)	
ROOMMATE.COM, LLC.,	)	
	)	
Defendant.	)	
_____	)	

DEPOSITION OF BRYAN PETERS

SCOTTSDALE, ARIZONA

SEPTEMBER 2, 2008

Reported by: Stephanie D. Gustave, RPR, CA-CR 8680  
Certified Reporter No. 50756

NICHOLS CERTIFIED COURT REPORTERS

-000373-

1 to this page.

2 Q. What do you think they are sent to, if not  
3 this page Exhibit 124?

4 A. Possibly they would be shown an alert. I  
5 don't remember.

6 Q. What would the alert say, to your memory?

7 A. I can't remember.

8 Q. Nonmembers are unable to obtain more  
9 information to contact the individuals who have a space  
10 available or are seeking a space. Correct?

11 MR. ALGER: Hold on. Don't answer that.

12 First of all, has Exhibit 123 or  
13 Exhibit 124 been produced in litigation?

14 MR. BRANCART: These are from the website.

15 MR. ALGER: Have they been produced in  
16 discovery?

17 MR. BRANCART: These have been off the  
18 website per your instruction. They are directly from  
19 the website.

20 MR. ALGER: Were they produced in  
21 discovery?

22 MR. BRANCART: They are from the website so  
23 they are available to everyone.

24 MR. ALGER: I don't see any Bates stamp on  
25 them.

1 Q. And remove them. Correct?

2 A. Remove what?

3 Q. Photographs that have e-mail addresses?

4 A. Yes.

5 Q. Other than someone who puts their e-mail  
6 address in the photo, there is no way for a nonmember  
7 to contact a person listed in Matching Roommates.  
8 Correct?

9 A. You never discussed nicknames.

10 Q. How is it through nicknames could a  
11 nonmember contact a person who appears in Matching  
12 Roommates?

13 A. Try to force their e-mail address into the  
14 nickname.

15 Q. Try to guess what their e-mail address  
16 might be through the nickname?

17 A. Yes.

18 Q. Other than an e-mail address appearing in  
19 the photograph or trying to force their nickname into  
20 an e-mail address, Roommates.com doesn't provide  
21 nonmembers with contact information. Correct?

22 A. Correct.

23 (Whereupon, Exhibit No. 125 is marked for  
24 identification by the court reporter.)

25 (Next page, please.)

1 provide the nonmember using the preview function with  
2 contact information for those persons listed in  
3 Matching Roommates. Correct?

4 A. On the page titled Matching Roommates, they  
5 don't.

6 Q. Roommates.com doesn't provide the nonmember  
7 with contact information. Correct?

8 A. Correct.

9 MR. ALGER: For the record, 125 and 126  
10 don't have Bates numbers. They weren't produced in  
11 discovery either. Correct?

12 MR. BRANCART: These were straight from the  
13 website. They were not produced in discovery, other  
14 than they are directly from the website which counsel  
15 directed us to.

16 BY MR. BRANCART:

17 Q. What are the advantages of becoming a  
18 member of Roommates.com as opposed to being a nonmember  
19 who attempts to use the site?

20 MR. ALGER: Objection Vague and  
21 ambiguous.

22 THE WITNESS: Could you be more clear.

23 BY MR. BRANCART:

24 Q. Why would anyone want to become a member of  
25 Roommates.com as opposed to try to use the site as a

1 Do you see that?

2 A. Yes.

3 Q. The person who selects "I am looking for a  
4 place to live" is the person who is seeking a place to  
5 live. Correct?

6 A. Not necessarily.

7 Q. What would not necessarily be about that?

8 A. You're not being specific as to the person.

9 Q. If a person clicks "I am looking for a  
10 place to live," then to become a member they have to  
11 complete a series or advance through a series of web  
12 pages. Correct?

13 A. They don't have to.

14 Q. To become a member?

15 A. Yes.

16 Q. If a person clicks "I have a place  
17 available for rent," they have to proceed or advance  
18 through a series of web pages in order to become a  
19 member. Correct?

20 A. Yes.

21 Q. Directing your attention to those two words  
22 where it says Select One, if you compare that with  
23 Exhibit 128, Exhibit 127 says "I am looking for a place  
24 to live." Exhibit 128 says "I need a place to live."  
25 Do you see that?

1 you made that decision?

2 A. No.

3 Q. Are there any other changes that you are  
4 aware of that you may have made to the screen as it  
5 appeared in Exhibit 131?

6 A. I don't remember making any changes.

7 Q. Turn your attention to the use of the words  
8 in Exhibit 131 lease period. Do you see that?

9 A. Yes.

10 Q. Was that changed?

11 A. I don't know.

12 Q. Is the lease period that appears here in  
13 Exhibit 131 meant to reflect the same information as  
14 the word term that appears in 132?

15 A. It seems so.

16 Q. Other than changing the wording that  
17 appears between Exhibits 131 and 132, was there any  
18 change in the function of the website that you are  
19 aware of?

20 MR. ALGER: Vague and ambiguous.

21 THE WITNESS: I am not sure what you mean.

22 BY MR. BRANCART:

23 Q. Other than changing the wording that  
24 appears on Exhibit 131 to Exhibit 132, are you aware of  
25 any changes that were made to the dropdown menus?

1 A. I am not aware of any changes at this time.

2 (Whereupon, Exhibit No. 133 is marked for  
3 identification by the court reporter.)

4 BY MR. BRANCART:

5 Q. Showing you Exhibit 133. Exhibit 133 is a  
6 depiction of the web page My Space Preferences showing  
7 what would appear when you click the dropdown menu from  
8 maximum rent. Correct?

9 A. It seems to be.

10 Q. A person seeking a place to live who is  
11 completing the web forms to become a member of  
12 Roommates.com is required to answer using the dropdown  
13 menu maximum rent. Correct?

14 MR. ALGER: Objection Vague and  
15 ambiguous.

16 THE WITNESS: What is your specific  
17 question?

18 BY MR. BRANCART:

19 Q. A person completing the form My Space  
20 Preferences is required for using the dropdown menu, to  
21 click one of the values that appears there in order to  
22 advance to the next form. Correct?

23 A. No.

24 Q. A person completing My Space Preferences is  
25 required to have a value appear where it says maximum



1 rent, whether it be the default value 2,000 per month  
2 or some other value. Correct?

3 A. The value is selected.

4 Q. They are required to select a value?

5 A. No.

6 Q. If the person fails to select a value from  
7 the dropdown menu where it says maximum rent on  
8 Exhibit 133, then there's a pop-up, if you click next,  
9 a pop-up appears and says "maximum dollar amount is  
10 required." Isn't that correct?

11 A. No.

12 Q. Is a person required to specify a maximum  
13 rent by clicking on one of these items in the dropdown  
14 menu?

15 A. The value was already selected.

16 Q. When you say "the value is already  
17 selected" you mean the default value, 2,000 per month?

18 A. Yes. The no preference is already  
19 selected.

20 Q. There must be a value placed there in the  
21 maximum 2,000 per month or some other value that is  
22 clicked by the user completing this form as part of  
23 registration. Correct?

24 A. The value that is selected works fine. You  
25 don't have to change it.

1 Q. If they want to change it, they have to  
2 click one of these values?

3 A. They may change it.

4 Q. To change it they must click one of these  
5 values that appears in a dropdown menu?

6 MR. ALGER: Vague and ambiguous. Also,  
7 asked and answered about three times now.

8 BY MR. BRANCART:

9 Q. Is that correct?

10 A. If they feel like changing the value they  
11 may use the dropdown for how it is designed and select  
12 something different.

13 Q. They cannot click the bottom of the  
14 dropdown menu that appears on 133, which is a blank  
15 space, no value. Correct?

16 A. They can select that.

17 Q. If they select that and click next, a  
18 pop-up window appears stating "maximum dollar amount is  
19 required." Correct?

20 A. If they select the placeholder at the  
21 bottom, the dropdown, they have modified the default  
22 selection, yes, an alert will pop up.

23 Q. That alert will say "maximum dollar amount  
24 is required." Correct?

25 A. I don't remember the exact phrase.

1 Something of that nature.

2 Q. Mr. Peters, a value, whether it is the  
3 default value of 2,000 per month or some other value  
4 which goes down to 200 per month, must be indicated  
5 here where it says maximum rent in order to click next  
6 and continue on to the next web page?

7 A. I already answered that.

8 MR. AIGER: Asked and answered.

9 (Whereupon, Exhibit No. 134 is marked for  
10 identification by the court reporter.)

11 BY MR. BRANCART:

12 Q. Let me present to you Exhibit 134. This is  
13 a screen shot of the My Space Preferences web page as  
14 part of the registration process for an individual who  
15 is looking for a place to live. Correct?

16 A. Please repeat that. Like I said before, I  
17 am trying to look at the page to make sure there's  
18 nothing weird going on.

19 Q. Let me withdraw the question. Exhibit 134  
20 reflects the drop-down menu values that appears next to  
21 the item term on the My Space Preferences. Correct?

22 A. Yes.

23 Q. The user seeking to become a member is  
24 required to have a value, whether it be 12 months down  
25 to month-to-month there in this dropdown menu, this

1 particular prompt, in order to proceed to the next  
2 window as part of the registration process. Correct?

3 A. If they are unhappy with 12 months or less,  
4 they may select something different.

5 Q. They may select one of the values that  
6 appears here in the dropdown value in Exhibit 124, but  
7 they must select one of these values. Correct?

8 A. They don't have to select a value.

9 Q. In order to register they need to select  
10 one of those values. Correct?

11 A. Correct.

12 Q. If a user selects the placeholder that  
13 appears at the bottom of the dropdown menu which has no  
14 value, when they click next there's a pop-up box that  
15 opens that says "term is required" Correct?

16 A. Correct.

17 Q. If they click on that Term is Required,  
18 then it returns them back to the My Space Preferences  
19 window?

20 A. Correct.

21 Q. That was the same also for maximum rent.  
22 If you click on the "maximum rent is required," if you  
23 click on that it returns you back to the My Space  
24 Preferences?

25 A. Click on what?

1 Q. Withdraw the question.

2 What you have just described, the operation  
3 of the pop-up for term, is the same operation that the  
4 pop-up serves for maximum rent. If you click on it  
5 where it says maximum rent required, it returns you  
6 back to the My Space Preferences page. Correct?

7 A. Correct.

8 (Whereupon, Exhibit No. 135 is marked for  
9 identification by the court reporter.)

10 BY MR. BRANCART:

11 Q. Showing you now Exhibit 135. This is a  
12 printout of the web screen About Me, which was one of  
13 the screens that a person who is seeking a place to  
14 live needed to complete to become a member. Correct?

15 MR. ALGER: Objection Instruct him not to  
16 answer for the reasons stated earlier.

17 BY MR. BRANCART:

18 Q. Exhibit 135 is a depiction of the Roommates  
19 screen About Me as it appeared August 9, 2004.  
20 Correct?

21 MR. ALGER: Same objection. Instruct him  
22 not to answer.

23 (Whereupon, Exhibit No. 136 is marked for  
24 identification by the court reporter.)

25 (Next page, please.)

1 as it appears in Exhibit 128, are you aware of any  
2 change to the function of the website in how it  
3 operates?

4 MR. ALGER: Objection. Vague and  
5 ambiguous.

6 THE WITNESS: I would prefer you to list  
7 specifics.

8 BY MR. BRANCART:

9 Q. By changing the language "I am looking for  
10 a place to live" to "I need a place to live" was there  
11 any change made to how the website operated in terms of  
12 that selection criteria that is listed here on Exhibit  
13 127, was there any change to how the website operated,  
14 other than the language change?

15 MR. ALGER: Objection Vague and  
16 ambiguous.

17 THE WITNESS: It is too broad.

18 BY MR. BRANCART:

19 Q. As you sit here today, are you able to  
20 think of whether or not the function of the website  
21 changed in terms of this selection box, Select One,  
22 from "I am looking for a place to live" to "I need a  
23 place to live," other than just a word change? Was it  
24 just a word change?

25 A. Would you like to ask if it was just a word

1 change?

2 MR. AIGER: That is the question now.

3 THE WITNESS: Most likely from what I can  
4 remember, it would only have been a word change. I do  
5 not remember the change.

6 BY MR. BRANCART:

7 Q. Your answer would be the same for  
8 Exhibit 127, "I have a place available for rent" versus  
9 128, "I have a place available" just a word change?

10 A. Most likely just a word change.

11 Q. Turning your attention back to Exhibit 136,  
12 which is a screen About Me that must be completed by a  
13 person who has currently checked "I need a place to  
14 live" in order to become a member. Correct?

15 A. We are moving back. Let's repeat that one  
16 more time so I can get caught up.

17 Q. Exhibit 136 is a webpage which must be  
18 completed by a person seeking to become a member of  
19 Roommates.com who has indicated at the Free Membership  
20 prompt Select One, "I need a place to live." Correct?

21 A. Yes.

22 Q. The person who has indicated "I need a  
23 place to live" and is seeking to register, is required  
24 to indicate a value where it says age from the dropdown  
25 menu. Correct?

1 present. Correct?

2 MR. ALGER: Same objection. Instruct him  
3 not in answer.

4 (Whereupon, Exhibit No. 146 is marked for  
5 identification by the court reporter.)

6 BY MR. BRANCART:

7 Q. If the person seeking to register clicks  
8 the placeholder and doesn't indicate one of these two  
9 written values in the dropdown menu and clicks next, a  
10 window will appear, a pop-up window, saying Children  
11 Selection is Required. That pop-up window is  
12 demonstrated in Exhibit 146. Correct?

13 MR. ALGER: Same objection. Instruct him  
14 not to answer.

15 BY MR. BRANCART:

16 Q. Mr. Peters, for each of the pop-up windows  
17 that we have identified, Exhibit 146, 144, 142, 140 and  
18 138, if the user selects okay, the website will return  
19 the user back to the About Me page. Correct?

20 MR. ALGER: Same objection. We went  
21 through this in 2004. Instruct you not to answer.

22 BY MR. BRANCART:

23 Q. The screen shots that we just looked at  
24 are the screen shots from the website as of 2008. My  
25 question to you is: Between 2004 and 2008, are you



1 aware of any changes that were made to the website  
2 reflecting the language used in the dropdown menus that  
3 we have reviewed as they are displayed in the About Me  
4 web page?

5 A. Nothing that I can remember.

6 Q. The pages that we have looked at here for  
7 the About Me page, would be the same as would appear on  
8 the website in 2004. Is that correct?

9 MR. ALGER: Let's make sure for the record  
10 what pages we are talking about here.

11 BY MR. BRANCART:

12 Q. The pages that we have looked at here  
13 regarding the About Me, which are identified as  
14 Exhibits 136 through Exhibit 146, reflect what a user  
15 would have seen if using the website in 2004. Is that  
16 correct?

17 A. From what I can remember today, yes.

18 Q. There has been no change to the language or  
19 the operation of the About Me page between 2004 and  
20 2008. Is that correct?

21 MR. ALGER: Objection Asked and answered.

22 BY MR. BRANCART:

23 Q. Is that correct?

24 A. I already answered that. It is the same  
25 answer. I forgot the question. You have me all

1 rattled here because you are asking me the same thing  
2 twice.

3 Q. I want to make sure that the screen shots  
4 that we looked at, which we identified as Exhibit  
5 numbers from I think 136 to 146 reflect the very same  
6 screens that would have appeared in 2004. Is that  
7 correct?

8 MR. ALGER: Asked and answered.

9 THE WITNESS: As of today, yes, from what I  
10 can remember.

11 MR. ALGER: Can we take our break now. It  
12 has been an hour and a half. It is now 11:23.

13 (Recess taken from 11:23 a.m. to  
14 11:40 a.m.)

15 BY MR. BRANCART:

16 Q. Turning your attention to the process that  
17 must be completed by a person who has indicated  
18 currently "I need a place to live" they are required  
19 if they want to become a member to navigate first  
20 through the Free Membership page, which is Exhibit 128.  
21 Correct?

22 MR. ALGER: Asked and answered. Also, goes  
23 back to the 2004 depositions. We are not going to answer  
24 questions on that.

25 (Next page, please.)

1 "Q. Between 2004 and 2008, has it been  
2 the case that a person who has a place  
3 available for rent could use the search  
4 the date base function as reflected in  
5 Exhibit 160 to limit the results they  
6 receive for potential persons interested  
7 or looking for a place available to rent  
8 by children present and children not  
9 present.")

10 THE WITNESS: No.

11 BY MR. BRANCART:

12 Q. What is the basis of your answer?

13 A. You didn't define the person who has the  
14 place available.

15 Q. What do you mean by that?

16 A. I don't know who they are.

17 Q. I am using the nomenclature from  
18 Roommates.com where a person is supposed to select at  
19 the beginning of the Free Membership, "I am looking for  
20 a place to live" or "I have a place available for  
21 rent." Do you recall those being the two designators?

22 A. Yes.

23 Q. Turning your attention to the second of  
24 those two designators, which is "I have a place  
25 available for rent." Between 2004 and 2008, today, it

1 has been the case that persons who have indicated "I  
2 have a place available for rent" can use the Search the  
3 Data Base functions as reflected in Exhibit 160 to  
4 limit those listings that they see of persons  
5 interested in renting an available place by children  
6 present or children not present. Correct?

7 A. Limit is the hard word. I do not know for  
8 sure if in each case it limits.

9 Q. It yields results, depending upon what  
10 value is put here, children present versus children not  
11 present, as to whether or not those listings will  
12 appear in My Roommate Matches for children present and  
13 children not present. Correct?

14 MR. ALGER: Objection. Vague and  
15 ambiguous.

16 BY MR. BRANCART:

17 Q. You can answer.

18 A. I don't remember how that specific question  
19 works. I don't remember the results at this time.

20 Q. Similarly, a person who uses the Search the  
21 Data Base who is a person who has indicated "I have a  
22 place available for rent," can limit the results that  
23 they receive for matches by age. Correct?

24 A. Correct.

25 (Next page, please.)

1 so you can get sound bites that weren't effectively  
2 covered by previous counsel in this case. We are going  
3 to break it off if you do not ask questions about  
4 changes since 2004 or new topics. I have made that  
5 crystal clear throughout the day.

6 BY MR. BRANCART:

7 Q. As depicted here in Exhibit 161 as  
8 reflected in the website in 2008, is this the same  
9 function that the website had regarding the dropdown  
10 menu reflecting ages that the website had in 2004?

11 A. Yes.

12 Q. Is it used in the same manner, that is, the  
13 person who has a place available for rent can indicate  
14 the age by which they want to limit the search results  
15 they receive?

16 A. The person who selected that they have a  
17 place available may limit the results placed on the age  
18 selection.

19 Q. Similarly, is it true has it remained the  
20 case between 2004 and 2008 that that same person can  
21 limit the search results by checking off one of the  
22 check boxes here at the top of the screen here, and we  
23 use, for example, Exhibit 159, straight female,  
24 professional, et cetera?

25 A. Yes.

1 2008 as to what appears to the user when they submit  
2 after they have completed Search the Data Base?

3 A. I don't believe so.

4 (Whereupon, Exhibit No. 162 is marked for  
5 identification by the court reporter.)

6 BY MR. BRANCART:

7 Q. I want to turn your attention back to a  
8 person who has indicated "I need a place to live."  
9 Presently, the operation of the website provides that  
10 once the person has completed their profile they will  
11 receive a My Matches printout of matching roommates,  
12 such as Exhibit 162. Correct?

13 MR. ALGER: Objection It is the same  
14 issue. Instruct him not to answer.

15 BY MR. BRANCART:

16 Q. Between 2004 and today, 2008, is the  
17 information that is received after a person who has  
18 indicated "I need a place to live" in the form of My  
19 Matches, particularly Matching Roommates, has that  
20 changed?

21 A. No.

22 Q. Presently, My Matches as it appears in the  
23 Exhibit 162 is generated by the Roommates website.  
24 Correct?

25 MR. ALGER: Objection Vague and

1 ambiguous. Same stuff that we have gone over in 2004.

2 Instruct him not to answer.

3 BY MR. BRANCART:

4 Q. Presently, does the website in compiling My  
5 Matches for a person who has indicated I need a place  
6 to live, limit those matches based upon the information  
7 provided in the person's form About Me?

8 MR. ALGER: Same instruction. Same  
9 objection.

10 BY MR. BRANCART:

11 Q. Has there been any change in the manner in  
12 which Roommates.com generates matching roommate  
13 printouts similar to Exhibit 162 between 2004 and 2008?

14 A. To be clear, we don't generate printouts,  
15 no paper. It appears, based on what I am seeing here,  
16 you are talking about what is shown on a computer  
17 screen.

18 Q. Correct.

19 A. Nothing has changed.

20 Q. So I am clear, the manner in which the  
21 Roommates website generates Matching Roommate screens  
22 as depicted in 162 for individuals who have indicated  
23 "I need a place to live" has remained the same between  
24 2004 and 2008. Correct?

25 A. Yes.

1 MR. ALGER: Same objection. Same  
2 instruction.

3 BY MR. BRANCART:

4 Q. Between 2004 and 2008, has there been any  
5 change to the method by which Roommates.com generates  
6 e-mail notifications, exemplar of which is Exhibit 163?

7 A. I don't believe so.

8 Q. In generating the e-mail notifications, it  
9 indicates that there's a match. Presently, that  
10 indicates that there is a person who has a place  
11 available for rent. Is that correct?

12 MR. ALGER: Same instruction. Same  
13 objection.

14 BY MR. BRANCART:

15 Q. Between 2004 and 2008, whenever  
16 Roommates.com uses the word match, it has always  
17 consistently meant that that indicates if it is  
18 notification for a person who needs a place to live,  
19 that there's a person who has a place available to  
20 rent. Correct?

21 A. Can you repeat that.

22 Q. During the period of time 2004 to 2008,  
23 when Roommates.com communicates by either matching  
24 roommates, as in Exhibit 162, or e-mail notifications,  
25 as in Exhibit 163, to a person who has indicated "I



1 BY MR. BRANCART:

2 Q. Turning your attention to 2008, the basis for  
3 your inability to answer the question is because the  
4 language has changed where it says "I have a place  
5 available for rent." Is that correct?

6 A. I am not sure. That was part of it.

7 Q. Anything else that is impeding your ability  
8 to answer that question?

9 MR. AIGER: Don't answer it.

10 BY MR. BRANCART:

11 Q. Let me show you now Exhibit 128. This is  
12 the screen as it appears presently for the Free  
13 Membership web page. Correct?

14 A. I believe so.

15 Q. If a person clicks "I have a place  
16 available," they must then complete a series of web  
17 pages providing information in order to become a  
18 member. Correct?

19 A. Yes.

20 Q. Presently they must complete the Free  
21 Membership page, which you have there, 128?

22 A. Yes.

23 Q. And then click submit. Correct?

24 A. Yes.

25 Q. They complete a My Location web page and

1 web page. Is that correct?

2 A. I believe so.

3 Q. After that is completed the next one is  
4 Resident Description web page. Correct?

5 A. Resident's Description?

6 Q. Correct.

7 A. Correct.

8 Q. Currently the next page is called Space  
9 Details web page. Correct?

10 A. I believe that's the order.

11 Q. The next one is Household Description?

12 A. I believe so.

13 Q. This next one is Household Character.

14 Correct?

15 A. I believe so.

16 Q. The next one is My Roommate Preferences.

17 Correct?

18 A. Did you say roommate or roommates?

19 Q. Roommate.

20 A. I believe that's right.

21 Q. The last one is additional comments.

22 Correct?

23 A. Correct.

24 Q. Each of these pages presently has to be  
25 navigated by a person who has indicated "I have a place

1 available" in order to become a member of  
2 Roommates.com. Correct?

3 A. Correct.

4 (Whereupon, Exhibit No. 164 is marked for  
5 identification by the court reporter.)

6 BY MR. BRANCART:

7 Q. I will turn your attention to Exhibit 164.  
8 Does Exhibit 164 reflect the My Location web page as it  
9 appeared on August 9, 2004?

10 MR. ALGER: Object and instruct him not to  
11 answer for the same reasons as stated before. We went  
12 over this in 2004.

13 (Whereupon, Exhibit No. 165 is marked for  
14 identification by the court reporter.)

15 BY MR. BRANCART:

16 Q. I will show you Exhibit 165. Is 165 an  
17 accurate depiction of the My Location web page as it  
18 appears in August, 2008?

19 MR. ALGER: Same objection. If you want to  
20 ask him if there are changes, you can ask him those.  
21 Instruct him for the same reasons as stated before.

22 MR. BRANCART: Just instruct him.

23 MR. ALGER: You don't have to tell me what  
24 to do.

25 MR. BRANCART: If you don't instruct him, I

1 true?

2 MR. ALGER: Objection. Asked and answered.

3 THE WITNESS: I answered the question.

4 BY MR. BRANCART:

5 Q. Is there anything that you can look at to  
6 refresh your recollection as to why you made the  
7 change?

8 A. Nothing that I can look at right now.

9 Q. Is there anything you have in mind that you  
10 could look at that would assist you as to why you made  
11 the change?

12 A. No.

13 Q. Turn your attention back to Exhibit 167.  
14 Presently, if a person who has indicated "I have a  
15 space available" completing the process to register as  
16 a member leaves blank where it says monthly fee at that  
17 prompt, there's a default value that is entered.  
18 Correct?

19 MR. ALGER: Can I have the question read  
20 back?

21 MR. BRANCART: I will withdraw the last  
22 question to Exhibit 167.

23 BY MR. BRANCART:

24 Q. Specifically on the Space Details page  
25 where it says monthly fee, a person registering to

1 become a member has to complete this page. Correct?

2 A. True.

3 Q. If in the course of completing this page  
4 Space Details they leave blank the prompt where it says  
5 monthly fee, a default value is generated. Correct?

6 A. I don't remember.

7 Q. Turn to the next prompt that appears on  
8 Exhibit 167 where it says deposit. If a person in the  
9 course of registering to become a member at  
10 Roommates.com leaves a blank where it says deposit or  
11 inserts no value, then a default value is automatically  
12 generated by the website. Correct?

13 A. I don't remember.

14 (Whereupon, Exhibit No. 168 is marked for  
15 identification by the court reporter.)

16 BY MR. BRANCART:

17 Q. Turn your attention now to Exhibit 168.  
18 Exhibit 168 reflects the values that appear on a  
19 dropdown menu for the prompt term in the Space Details  
20 web page. Correct?

21 A. Correct.

22 Q. The person who has indicated "I have a  
23 place available" is required to indicate one of these  
24 values from the dropdown menu from 12 months down to  
25 month-to-month in order to complete the registration

1 process to become a member. Correct?

2 A. I can't say for sure. I don't remember.

3 Q. If the person seeking to register to become  
4 a member who has indicated "I have a place available"  
5 indicates the placeholder value, which is nothing, it  
6 appears, under month-to-month and then hits next, a  
7 pop-up window appears stating Term is Required.  
8 Correct?

9 A. I believe so.

10 Q. Exhibit 173 is an example of that pop-up  
11 window?

12 A. Correct.

13 Q. Once this pop-up window appears and the  
14 user clicked okay, it returns back to the Space Details  
15 screen, Exhibit 168?

16 A. Yes.

17 (Whereupon, Exhibit No. 169 is marked for  
18 identification by the court reporter.)

19 BY MR. BRANCART:

20 Q. We are going to identify the pop-up window  
21 for Term as Required as Exhibit 169. Exhibit 169 is  
22 the pop-up window that appears. If a user fails to  
23 indicate one of the values from 12 months to  
24 month-to-month under the term prompt it goes to Space  
25 Details as reflected in Exhibit 168. Is that correct?

1 A. I believe so.

2 Q. Just so that we are clear, if the user  
3 clicks okay on the pop-up where it says Terms Required  
4 on Exhibit 168, it bounces the user back to Space  
5 Details. Correct?

6 A. Yes.

7 Q. Presently, sir, do you know how many  
8 persons who have indicated "I have a place available"  
9 or what percentage of those individuals who are current  
10 users of Roommates.com have indicated where it says  
11 monthly fee zero or the default value?

12 A. I don't know.

13 Q. Turning your attention to deposit, of the  
14 persons who are currently users of Roommates.com that  
15 fit the category of "I have a place available," how  
16 many have indicated zero or the default value for  
17 deposit?

18 A. I don't know.

19 Q. Turn your attention to term, of the present  
20 users of Roommates.com that fit the category of "I have  
21 the place available," how many of them have indicated a  
22 term of month-to-month either by percentage or number?

23 A. I have no idea.

24 (Whereupon, Exhibit No. 170 is marked for  
25 identification by the court reporter.)

1 BY MR. BRANCART:

2 Q. I will show you a document identified as  
3 Exhibit 170. This is the screen shot of My Roommate  
4 Preferences of that web page as it appeared on  
5 August 9, 2004. Is that correct?

6 MR. ALGER: Instruct not to answer for the  
7 same reasons stated before.

8 (Whereupon, Exhibit No. 171 is marked for  
9 identification by the court reporter.)

10 BY MR. BRANCART:

11 Q. I will show you Exhibit 171. Exhibit 171  
12 reflects the web page My Roommate Preferences as it  
13 presently appears as of August, 2008 on the Roommates  
14 website. This being one of the web pages that has to  
15 be completed by a user to become a member. Correct?

16 A. No.

17 Q. What is incorrect about my statement?

18 A. It doesn't need to be completed.

19 Q. Let me rephrase my question. Exhibit 171  
20 reflects the My Roommate Preferences that has to be  
21 clicked through or advanced through by a person who is  
22 seeking to become a member who has indicated "I have a  
23 place available." Correct?

24 A. Yes.

25 Q. The purpose of My Roommate Preferences



1 allow a user who is looking for a roommate to modify  
2 the selections or check boxes.

3 Q. By modifying, they can modify to express or  
4 state their preferences in connection with the  
5 individual that they will consider as a roommate.  
6 Correct?

7 A. Correct.

8 Q. When I have used the phrase that you use in  
9 your website, "I have a place available" have you  
10 understood that I have been referring to your website  
11 page?

12 A. I just want to make sure.

13 Q. My question is: Have you understood that I  
14 have been referring to your website page?

15 A. Not necessarily.

16 Q. You remember my admonition, if you haven't  
17 understood one of my questions, you will let me know.  
18 Will you do that?

19 A. I will do my best.

20 (Whereupon, Exhibit No. 172 is marked for  
21 identification by the court reporter.)

22 BY MR. BRANCART:

23 Q. I will show you next Exhibit 172.  
24 Exhibit 172 shows the dropdown menu as it appears for  
25 the prompt age range on My Roommate Preferences.

1 Correct?

2 A. I am not seeing the entire range.

3 Q. This is as it would appear for a user in  
4 2008. Correct?

5 A. It might.

6 Q. If a person who is a person who has  
7 indicated "I have a place available" is completing the  
8 my Roommates preference page and they indicate the  
9 placeholder value, that is no age range, then, when  
10 they click next there's a pop-up that indicates that  
11 they must make a specific selection as to age. True?

12 A. I don't understand your question.

13 Q. If a person completing My Roommate  
14 Preferences page indicates the placeholder value at the  
15 end of these values, which is no digit and, therefore,  
16 leaves the age range blank, when they click next they  
17 will receive a pop-up window that says "please make a  
18 selection." Correct?

19 A. If they modify the age range from no  
20 preference and select the thing you are calling a  
21 placeholder, they will see an alert.

22 (Whereupon, Exhibit No. 173 is marked for  
23 identification by the court reporter.)

24 BY MR. BRANCART:

25 Q. That alert is as depicted in Exhibit 173.

1 Correct? "Please make a selection." Correct?

2 A. Correct.

3 Q. If they click okay, it bounces them back to  
4 Exhibit 172, which is the My Roommate Preferences page.  
5 Correct?

6 A. Yes.

7 (Whereupon, Exhibit No. 174 is marked for  
8 identification by the court reporter.)

9 BY MR. BRANCART:

10 Q. Let me show you now what will be identified  
11 as Exhibit 174. Exhibit 174 depicts the present  
12 dropdown menu for the prompt female as it appears in  
13 My Roommates Preferences. Correct?

14 A. My Roommate Preferences. You said  
15 roommates. Other than that, correct.

16 Q. If a user indicates the placeholder on the  
17 dropdown, which is the no value down here under no  
18 females, then when they click the next button they will  
19 receive a pop-up menu which indicates "please make a  
20 selection." Correct?

21 A. If they modify the dropdown so it selects  
22 the placeholder, yes.

23 (Whereupon, Exhibit No. 175 is marked for  
24 identification by the court reporter.)

25 (Next page, please.)

1 BY MR. BRANCART:

2 Q. That pop-up they will receive is reflected  
3 in Exhibit 175. Correct?

4 A. Yes.

5 Q. If they click the okay, they return back to  
6 the My Roommate Preferences?

7 A. Yes.

8 Q. They must indicate one of these values,  
9 straight female, lesbian, straight male or gay male.  
10 Correct?

11 A. No.

12 Q. I am sorry. One of these values has to  
13 appear where it says female, whether they select it or  
14 not. It has to have a word value there next to the  
15 female prompt. It can't have the placeholder.  
16 Correct?

17 A. Yes.

18 (Whereupon, Exhibit No. 176 is marked for  
19 identification by the court reporter.)

20 BY MR. BRANCART:

21 Q. Show you what is identified now as  
22 Exhibit 176. Exhibit 176 shows the dropdown menu for  
23 the prompt male as it appears in 2008 on the My  
24 Roommate Preferences page. Correct?

25 A. It appears.

1 Q. If the user clicks the place order value  
2 under no males, which is the blank there, then if they  
3 click next to navigate to the next page, they will  
4 receive a pop-up window which indicates "please make a  
5 selection." Correct?

6 A. If the user modifies the no preference  
7 selection and changes it to the placeholder and clicks  
8 next, they will see the alert.

9 (Whereupon, Exhibit No. 177 is marked for  
10 identification by the court reporter.)

11 BY MR. BRANCART:

12 Q. That alert is an example which is 177?

13 A. Yes.

14 Q. If they click the okay, they return back to  
15 the My Roommates Preferences. Correct?

16 A. Yes.

17 (Whereupon, Exhibit No. 178 is marked for  
18 identification by the court reporter.)

19 BY MR. BRANCART:

20 Q. Turn your attention now to Exhibit 178.  
21 Exhibit 178 shows the dropdown menu for the prompt  
22 Children as it appears on the My Roommate Preferences  
23 screen or web page on the Roommates website presently  
24 in 2008. Correct?

25 A. Could you rephrase that one more time.

1 MR. BRANCART: I will withdraw the last  
2 question.

3 BY MR. BRANCART:

4 Q. Exhibit 178 shows the dropdown values for  
5 the children's prompt on the My Roommate Preferences  
6 page as it exists today in 2008. Correct?

7 A. Yes.

8 Q. If a user clicks the placeholder value,  
9 which is the empty line here under "I will not live  
10 with children," then they receive a pop-up indicating  
11 "please make a selection." Correct?

12 A. If a user modifies the dropdown from its  
13 default no preference setting and select the  
14 placeholder and clicks next or save, it will pop-up.

15 Q. If you say they modify it from the "no  
16 preference setting," what do you mean by that?

17 A. The selections that are defaulted that are  
18 on the page when loaded for the first time are  
19 basically no preference. They include everyone and  
20 everything.

21 (Whereupon, Exhibit No. 179 is marked for  
22 identification by the court reporter.)

23 BY MR. BRANCART:

24 Q. So Exhibit 179, does this reflect the  
25 default preferences?

1 A. Yes.

2 Q. Looking at Exhibit 171, this reflects the  
3 default settings for My Roommate Preferences?

4 A. Correct.

5 Q. If a person just clicks next, these become  
6 the preferences that will be used in generating matches  
7 for that user. Correct?

8 A. Yes.

9 Q. If the user modifies these from, for  
10 example, straight or lesbian to simply straight, that  
11 will become one of the preferences that is used for  
12 generating matches for that user. Correct?

13 A. Yes.

14 Q. Similarly, when it comes to "I will live  
15 with children" if it is changed to "I will not live  
16 with children," that becomes one of the preferences  
17 that is used for generating matches for that user.  
18 Correct?

19 A. Yes.

20 Q. The user who does not modify the defaults  
21 as set forth in Exhibit 171 has stated a preference for  
22 being inclusive. Correct?

23 MR. ALGER: That is objectionable and  
24 argumentative. He has asked and answered the reverse  
25 version of that. We are not going to answer that

1 question. It is argumentative and also calls for  
2 speculation.

3 BY MR. BRANCART:

4 Q. After a user completes the registration  
5 process they receive a notification similar to that  
6 which we have previously identified indicating that  
7 they have a member profile. Correct?

8 MR. ALGER: Object and instruct him not to  
9 answer. This is subject to the deposition in 2004.  
10 There is no indication there has been a change in the  
11 process. Instruct him not to answer.

12 BY MR. BRANCART:

13 Q. Let me ask you this question. After a user  
14 completes the required web pages, is it presently the  
15 operation of Roommates.com that they generate a member  
16 profile for that user?

17 MR. ALGER: Object. Argumentative. Vague  
18 and ambiguous. Lacks foundation. Calls for  
19 speculation.

20 (Whereupon, Exhibit No. 180 is marked for  
21 identification by the court reporter.)

22 BY MR. BRANCART:

23 Q. Exhibit 180 is an exemplar of a member  
24 profile for a person who has indicated they have a  
25 place available as these are presently created or



1 generated by the Roommates website. Correct?

2 A. Can you repeat that.

3 Q. Exhibit 180 is an exemplar of a member  
4 profile as those profiles are currently generated by  
5 the Roommates website for a person who has completed  
6 registration indicating they have a place available.  
7 Correct?

8 A. Correct.

9 Q. The information that appears here under  
10 where it says Example 2's Preferences, this information  
11 is drawn directly from the users My Roommate  
12 Preferences page that we previously discussed, one  
13 exemplar which is Exhibit 178. Correct?

14 MR. ALGER: Object. Vague and ambiguous.  
15 Lacks foundation. Mischaracterizes the previous  
16 testimony. I also think we are getting into this  
17 problem area where it is stuff that we went over in  
18 2004. Mr. Rhodes had an opportunity to go into this in  
19 great detail in 2004. I will instruct him not to  
20 answer unless we can establish that there has been some  
21 change.

22 BY MR. BRANCART:

23 Q. The information that is generated in a  
24 member profile for a person who has indicated that they  
25 have a place available where it says Example 2's

1 Preferences, this information it appears down here is  
2 drawn directly from the user's completion of the  
3 roommate preference website. Correct?

4 A. Yes.

5 Q. That is the way the site presently operates  
6 and has operated between 2004 to present. Correct?

7 A. Yes.

8 Q. Presently to view a member's profile, such  
9 as Exhibit 180, reflecting information regarding a  
10 person who has a place available, a Roommates' member  
11 can click on this if it is available to them through  
12 the My Matches or Matching Roommates. That's one way  
13 they can see a member's profile. Correct?

14 MR. ALGER: Objection. It is vague and  
15 ambiguous.

16 MR. BRANCART: Let me rephrase the question  
17 because you look confused.

18 BY MR. BRANCART:

19 Q. Would you tell me presently in 2008 how it  
20 is that members of the Roommates website can access and  
21 view member profiles, such as an exemplar which is  
22 Exhibit 180?

23 A. The user can look at the example profile on  
24 the home page. The member can log-in, look at their  
25 matches, click more info in their matches.

1 Q. If they click more info in their matches  
2 that would bring up a member profile similar to the  
3 form in Exhibit 180. Correct?

4 A. Somewhat similar. Would you like more?

5 Q. Yes, please.

6 A. They can search for a member by nickname.  
7 They can perform a search.

8 Q. When you say "they can perform a search"  
9 what do you mean?

10 A. By clicking the power search tab, which we  
11 discussed earlier, and their mail center, if it  
12 contains a message, will have a link to the profile.

13 Q. If a member receives an e-mail notification  
14 and they click on that e-mail notification, that will  
15 then lead them to a member profile. Is that correct?

16 A. No.

17 Q. Where am I incorrect in what I stated?

18 A. E-mail notification would be a notification  
19 that they have a message in their mail center.

20 Q. When they go to the mail center where they  
21 have a message, they can click on that message and that  
22 would give them access to the member profile. Correct?

23 A. Yes.

24 Q. Have you told me all of the ways presently  
25 in 2008 that a member can get access to another

1 member's profile on the Roommates website?

2 A. No.

3 Q. What other ways?

4 A. I believe through new match notifications.

5 Q. What is a new match notification?

6 A. It is bonus e-mail that is sent out to  
7 users to let them know of new matches. That may not  
8 necessarily link directly to a profile.

9 Q. An example of a new match notification is  
10 an exhibit that we previously looked at, Exhibit 163.  
11 Is that correct?

12 A. That appears to be one.

13 (Whereupon, Exhibit No. 181 is marked for  
14 identification by the court reporter.)

15 BY MR. BRANCART:

16 Q. Exhibit 181 is another exemplar of a new  
17 match notification. Correct?

18 A. It seems to be.

19 Q. Through the new match notification these  
20 are e-mail notifications that are sent to Roommates'  
21 members advising them that they have a new match.  
22 Correct?

23 MR. ALGER: Object and instruct not to  
24 answer. This was covered in 2004. Mr. Rhodes had  
25 ample opportunity to explore.

1 website collects, sorts or displays data?

2 MR. ALGER: Objection. Vague and  
3 ambiguous.

4 THE WITNESS: That's something I can't  
5 answer.

6 BY MR. BRANCART:

7 Q. Are there any changes that you are aware of  
8 to the operation or function or the manner in which the  
9 website functions since 2004?

10 MR. ALGER: Same objection. Vague and  
11 ambiguous.

12 THE WITNESS: I don't know how to answer  
13 it.

14 BY MR. BRANCART:

15 Q. Are you aware of any changes to the way in  
16 which the website collects data from users since 2004?

17 A. Say that again.

18 MR. BRANCART: Could you read it back and  
19 reprint it in the record.

20 (The record was read as follows:

21 "Q. Are you aware of any changes to  
22 the way in which the website collects  
23 data from users since 2004?")

24 THE WITNESS: No. Not that I can think of  
25 right now.

1 BY MR. BRANCART:

2 Q. Are you aware of any changes to the  
3 Roommates website since 2004 in the way or manner in  
4 which it sorts data?

5 A. No, I am not aware of anything right now.

6 Q. Are you aware of any changes in the manner  
7 in which the website Roommates.com since 2004 displays  
8 data?

9 MR. ALGER: Objection. Vague and ambiguous  
10 as to the word displays.

11 THE WITNESS: Can you be more specific,  
12 please.

13 BY MR. BRANCART:

14 Q. Are you aware, either in the code written  
15 for the website or in the manner in which it displays  
16 data to its users or members, any changes since 2004 to  
17 present?

18 MR. ALGER: It is still vague and  
19 ambiguous. If you can answer it, go ahead.

20 THE WITNESS: That's everything. That's  
21 the whole site. Not that I can remember.

22 BY MR. BRANCART:

23 Q. Is there a manual, an internal manual  
24 within Roommates.com or some other organization  
25 reflecting how the website operates?

1 STATE OF ARIZONA     )  
                                   ) ss.  
2 COUNTY OF MARICOPA )  
3

4               BE IT KNOWN that the foregoing deposition was  
5 taken before me, STEPHANIE D. GUSTAVE, Certified  
6 Reporter, No. 50756 in and for the State of Arizona;  
7 that the witness before testifying was duly sworn to  
8 testify to the whole truth; that the questions  
9 propounded to the witness and the answers of the  
10 witness thereto were taken down by me in shorthand and  
11 thereafter reduced to typewriting under my direction;  
12 that the foregoing pages are a true and correct  
13 transcript of the said deposition, all done to the best  
14 of my skill and ability.

15              I FURTHER CERTIFY that I am in no way related  
16 to any of the parties hereto, nor am I in any way  
17 interested in the outcome hereof.

18              DATED at Scottsdale, Arizona, this 8th day of  
19 September, 2008.  
20

21  
22                                     \_\_\_\_\_  
STEPHANIE D. GUSTAVE, RPR, CA-CSR  
23 CERTIFIED REPORTER #50756  
24  
25